

REMARKS

As correctly noted in the Office Action Summary, claims 1-32 are pending. Claims 1, 5, 9, 10, and 32 have been amended to recite a single sequence. Applicants have cancelled claims 14-16 (Group II) and claims 21-31 (Groups IV-VI), and have amended claims 1, 5, 9-13, 17, 19-20, and 32 without prejudice to or disclaimer of the cancelled subject matter. The amendment to claims 11-13, 17, and 19-20 can be found at least at page 63, line 19 to page 71, line 2.

Applicants reserve the right to file continuation and/or divisional applications relating to the cancelled subject matter. Applicants have introduced new claims 33 and 34. New claims 33 and 34 find their support at least in the claims as originally filed. Accordingly, no prohibited new matter is believed to have been entered by way of the amendment.

Claims 1-32 are subject to a restriction requirement as follows:

Group I, claims 1-13 and 32, drawn to DNA;

Group II, claims 14-16, “drawn to methods of treatment comprising administering DNA molecules”;

Group III, claims 17-20, drawn to polypeptides;

Group IV, claims 21-23, “drawn to methods of treatment comprising administering polypeptide”;

Group V, claim 24, “drawn to methods of detecting *Streptococcus*”; and

Group VI, claims 25-27 or 28-29 or 30-31 “drawn to computer medium, computer based system or a method for identifying nucleic acid using database system or a method for identifying an expression modulating factor using database system”;

Applicants note for clarity of the record, that claim 24 is drawn to a method of detecting *Staphylococcus* and not *Streptococcus* as characterized in the Office Action.

Applicants were further required to elect one sequence. Applicants provisionally elect *with traverse* SEQ ID NO: 1450 and its cognate polypeptide, SEQ ID NO: 6352. *See* Office Action, page 2. Applicants further provisionally elect the claims of **Group I** (Claims 1-13 and 32) *with traverse*. Applicants respectfully request reconsideration of the requirement pursuant to 37 C.F.R. §§ 1.141 and 1.143.

Under M.P.E.P. § 803, a restriction is proper if the subject matter can be restricted into one of two or more claimed inventions, and these inventions must be independent (M.P.E.P. § 806.04) *and* distinct (M.P.E.P. § 806.05). *See* 37 C.F.R. § 1.142. The second element for a

restriction requirement to be proper is that if the search and examination of an entire application can be made without *serious burden*, the examiner must examine the entire application on the merits, even though it includes claims to independent and distinct inventions.

Restriction is a discretionary tool. It is not something that is required. Applicants note that the aspect of *burden* is emphasized again and again to the attendees of the Patent Office Customer Partnership Meetings, where the issue of restriction is frequently raised. For example, Tony Caputa discussed it at the December 8, 2004 meeting. He emphasized that not only must there be a burden, but it must be a *serious burden*.

Applicants submit that a search of a nucleic acid would be coextensive of a search the polypeptide that it encodes. Thus, there is no *serious burden* to keep the claims to the polypeptide (Group III) with the claims for the nucleic acid (Group I). Accordingly, Applicants respectfully request that the claims of Group III (claims 17-20 drawn to polypeptides) be rejoined with the claims of Group I, as no serious burden has been evinced by the Office.

For at least these reasons, Applicants respectfully request rejoiner of the claims between Group I and Group III.

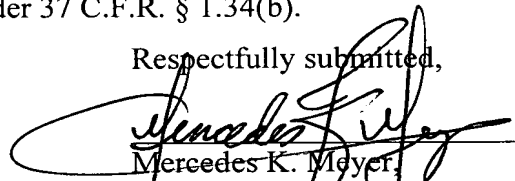
CONCLUSION

Should the Examiner have any questions or comments regarding Applicants' amendments or response, (s)he is asked to contact Applicants' undersigned representative at (202) 842-8821. Please direct all correspondence to the below-listed address.

In the event that the Office believes that there are fees outstanding in the above-referenced matter and for purposes of maintaining pendency of the application, the Office is authorized to charge the outstanding fees to Deposit Account No. 50-0573. The Office is likewise authorized to credit any overpayment to the same Deposit Account Number. The undersigned is signing in her authority under 37 C.F.R. § 1.34(b).

Date: August 16, 2005

Respectfully submitted,



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